

K.S.A. 1996 Supp. 44-551(b)(2)(A) provides that the Appeals Board shall not review a preliminary hearing order entered by an administrative law judge unless it is alleged that the administrative law judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 1996 Supp. 44-534a allows appeals from a preliminary hearing for the specific jurisdictional issues regarding whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or timely claim made, or whether certain defenses apply.

Claimant argues that the Administrative Law Judge's denial of the requested benefits at the preliminary hearing was a ruling that the claimant's injury did not arise out of and in the course of her employment with this respondent. This issue, if disputed, is one of the issues set forth in K.S.A. 1996 Supp. 44-534a(a)(2) as issues which are to be considered jurisdictional and subject to review by the Appeals Board on an appeal from a preliminary hearing order.

Respondent's position is that the Appeals Board lacks jurisdiction to review this order as the Administrative Law Judge did not deny that the claimant's alleged injuries arose out of and in the course of her employment with the respondent. Although the preliminary hearing order denied the claimant's request for medical benefits, the respondent was furnishing authorized medical treatment benefits. This shows that respondent was not denying the compensability of the claim.

The following discussion between Court and counsel appears at page 5 of the March 12, 1997, preliminary hearing transcript:

JUDGE BENEDICT: Okay. And at this time Doctor Huang is the authorized treating physician?

MR. POST: That's correct.

MR. KUBIN: Yes.

A review of the previous preliminary hearing order entered in this matter indicates that this preliminary hearing order is consistent with the previous order. That prior order granted some medical benefits although not with the physician whom claimant now seeks to have authorized. Thus, it constituted a finding that claimant's claim was compensable. The Order before the Board in this appeal did not set aside that previous finding of compensability. From the record, the Appeals Board concludes that the denial of temporary total benefits in this case was not based on a finding that the injury did not arise out of and in the course of employment.

The Appeals Board has ruled on numerous occasions that the ordering and/or providing of medical treatment falls within the power of the administrative law judge at preliminary hearings. In the instant case, the Administrative Law Judge determined, through his order, the ongoing course of medical treatment to the claimant. This is not an issue listed in K.S.A. 1996 Supp. 44-534a and the Appeals Board finds the Administrative

Law Judge did not exceed his jurisdiction in making such an order. Accordingly, this Appeals Board does not have jurisdiction to review that decision.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the claimant's appeal should be dismissed and the Order Denying Compensation of Administrative Law Judge Bryce D. Benedict, dated March 13, 1997, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

c: Paul D. Post, Topeka, KS  
Kip A. Kubin, Overland Park, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director